

UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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MATTHEW BOUDREAU

Case No. 2:23-cv-01306-MMD-EJY

**Plaintiff.**

## ORDER

v.

NETHANJAH BREITENBACH, et al.

## Defendants

## I. SUMMARY

Plaintiff Matthew Boudreau brings this civil rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated. (ECF No. 5.) On March 28, 2024, this Court ordered Plaintiff to file an amended complaint within 30 days. (ECF No. 4 at 7.) The Court warned Plaintiff that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.*) That deadline expired and Plaintiff did not file an amended complaint, move for an extension, or otherwise respond.

## II. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissing a case for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition  
 2 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*  
 3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
 4 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public's interest in expeditiously resolving this litigation  
 6 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's  
 7 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
 8 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
 9 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
 10 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
 11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can  
 13 be used to correct the party's failure that brought about the Court's need to consider  
 14 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
 15 that considering less drastic alternatives *before* the party has disobeyed a court order  
 16 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
 17 Cir. 2002) (explaining that "the persuasive force of" earlier Ninth Circuit cases that  
 18 "implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's  
 19 order as satisfying this element[,]," i.e., the "initial granting of leave to amend coupled with  
 20 the warning of dismissal for failure to comply[,]" have been "eroded" by *Yourish*). Courts  
 21 "need not exhaust every sanction short of dismissal before finally dismissing a case, but  
 22 must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d  
 23 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and  
 24 unless Plaintiff files an amended complaint, the only alternative is to enter a second order  
 25 setting another deadline. But the reality of repeating an ignored order is that it often only  
 26 delays the inevitable and squanders the Court's finite resources. The circumstances here  
 27 do not indicate that this case will be an exception: there is no hint that Plaintiff needs  
 28 additional time or evidence that he did not receive the Court's screening order. Setting

1 another deadline is not a meaningful alternative given these circumstances. Thus, having  
2 thoroughly considered all dismissal factors, the Court finds that they weigh in favor of  
3 dismissal.

4 **III. CONCLUSION**

5 It is therefore ordered that this action is dismissed without prejudice based on  
6 Plaintiff's failure to file an amended complaint in compliance with this Court's March 28,  
7 2024, order and for failure to state a claim.

8 The Clerk of Court is directed to enter judgment accordingly and close this case.  
9 No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his  
10 claims, he must file a complaint in a new case.

11 DATED THIS 3<sup>rd</sup> Day of May 2024.



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13 MIRANDA M. DU  
14 CHIEF UNITED STATES DISTRICT JUDGE  
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